

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LORI COWEN, et al.,

Plaintiff,

vs.

LENNY & LARRY'S, INC.,

Defendant.

Case No. 1:17-CV-01530

Judge Robert W. Gettleman

Magistrate Young B. Kim

**JOINT MOTION FOR CONTINUANCE OF FINAL APPROVAL HEARING ON CLASS
ACTION SETTLEMENT AGREEMENT**

Plaintiffs Lori Cowen, Rochelle Ibarrola, Ava Adames, Amanda Wells, and Barbara Whalen (together, “Plaintiffs”) and Defendant Lenny & Larry’s, Inc. (converted to and now known as Lenny and Larry’s, LLC) (“Defendant”) (collectively, the “Parties”) jointly request that the Court continue further proceedings and the hearing on final settlement approval as set forth below.¹

In support thereof, the Parties state as follows:

1. Plaintiffs filed this action on February 28, 2017.
2. Following three amended complaints, adjudication of Defendant’s motion to dismiss and to strike the class allegations, mediation before a retired federal judge, and informal discovery, the Parties entered into a Settlement Agreement (“Settlement”) to resolve Plaintiffs’ claims.
3. The Court preliminarily approved the Settlement on October 31, 2018. Pursuant to the preliminary approval order, the Parties issued notice of the Settlement in *PR Newswire* on November 30, 2018; through banner ads on Google, Facebook, and Yahoo running November

¹ Unless otherwise noted, all capitalized terms have the definitions attributed to them in the Settlement Agreement.

30, 2018 through December 30, 2018; through sponsored search listings on Google, Bing, and Yahoo from November 30, 2018 through January 29, 2019; in notices printed in *Sports Illustrated* and *People* on December 13, 2018 and December 14, 2018, respectively; and in the email and paper notices sent out on November 30, 2018. The deadlines to submit a claim, object to the Settlement, or request exclusion therefrom were January 29, 2019. The Final Approval Hearing is currently set for March 19, 2019.

4. Pursuant to the preliminary approval order, Class Counsel also submitted a fee petition on February 5, 2019.

5. The Parties initially forecasted that Settlement Class Members would submit approximately 6,000 to 10,000 claims during the claims period. Due to the robust notice and outreach (including the electronic publication and other notice described above), however, the Claims Administrator received over 80,000 claims, with approximately 10% seeking cookies and the balance requesting cash.

6. The overwhelming response to the notice *via* claims submission eliminated the need for the secondary product distribution set forth in Section 2.8 of the Settlement. As such, shortly after the submitted claims exceeded the 10,000 threshold on or around December 21, 2018, the Parties began discussing potential modifications to the Settlement to account for the overwhelmingly positive response to the Settlement.

7. The Parties explored amendments to the Settlement that would increase the cash available to Settlement Class Members so that all claimants would receive at least the full dollar value of their claims as provided in the Settlement. Based on their discussions, the Parties reached an agreement in principal to convert the Settlement to a claims made settlement. As the

parties were finalizing an Amendment to the Settlement Agreement, the Claims Administrator provided results from preliminary fraud testing on a subset of approximately 83,000 web claims.

8. The preliminary fraud testing based on a sample size of approximately 600 claims revealed that at least 30% of those web claims likely involved fraud on the part of claimants. The Claims Administrator reports that it expects to complete fraud testing within the next two weeks.

9. Under these circumstances, the Parties' respectfully request that the Court continue the pending Final Approval Hearing now set for March 19, 2019 to May 2, 2019, as well as any corresponding deadlines for submission of the Parties' motion in support of final settlement approval. The Parties will provide the Court with an update on the claims data from the Claims Administrator or file a motion requesting approval of an Amendment to the Settlement Agreement on or before March 22, 2019. No Party is prejudiced by this motion, and the new schedule shall afford all stakeholders (or interested parties) ample opportunity to comment on, support, or object to any revised settlement that is submitted to this Court.

Dated: February 25, 2019.

Respectfully Submitted,

/s/ Edward A. Wallace

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Dated: February 25, 2019

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CERTIFICATE OF SERVICE

I, Todd P. Stelter, an attorney, certify that I shall cause to be served a copy of **Joint Motion to Continue Final Approval Hearing** upon the below listed individual(s), by deposit in the U.S. mail, postage prepaid, messenger delivery, Federal Express, facsimile transmitted from (312) 704-3001, or electronically via the Case Management/Electronic Case Filing System ("ECF") as indicated, on **February 25, 2019**.



CM/ECF
Facsimile
Federal Express
Regular U.S. Mail
Messenger
E-Mail

To All Parties of Record

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s/ *Todd P. Stelter*
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